

Attached are our background check comments. Please give them your utmost attention, before we drive even more children into illegal care.

That will be the untended consequence of these new WACs.

These are the comments submitted by SEIU Local 925, on behalf of the 12,000 family child care providers represented in Washington.

While some of the Background Check Rules are written more clearly in the February 11, 2008 draft, we continue to have major concerns. We have spent countless hours reviewing these Background Check Rules, beginning when DEL initially created the Emergency Rules. At that time, SEIU was told the only changes to be made were to change the numbers from 388 to 170 and DSHS to DEL. That, in fact, was not true. The wording was changed. The 388-06 Background Check WACs were changed substantially. At that time, SEIU members submitted comments, attended public forums, and attended meetings to review comments. Now, it appears even more changes have been sprung on providers. New language appears in this draft. This language was not suggested in public forums and most likely will simply delay background checks even longer, driving more children into illegal care. There is language in this draft which will disqualify people who are, would be, or may be in the future excellent child care providers. These WACs need to be revised so they do not drive even more children into illegal child care.

SEIU Local 925 believes the purpose of the background check process is to screen-out people who have harmed children or adults in their past. If a person has committed crimes on the Director's list, the state will know it from the criminal background check.

Here are the concerns we request be addressed. We are requesting specific information about why each of the new sections was added. If our concerns cannot be addressed, we request a detailed explanation as to why not.

New Section 170-06-0020 (8) : "Negative Action"

This entire section is offensive, specifically using words such as "reasonably" and no specificity as to the kinds of licenses, employment, and findings. How is the department trained to be the judge of what is reasonable or what actions show poor character? How will the department be restrained from using this section to inappropriately punish child care providers, with whom, a licensor has a personal vendetta or problem. All of the examples from (i) to (vi) happen in context, which is not considered in this section. It is clear from the reading of the draft WAC that this section is intended to be the catch-all for punitive action. It is referred to at least 6 times, as a disqualifier.

Eliminate this section and all references to it in the WAC.

(ii) *A final determination, decision or finding made by an agency following an investigation not subject to further review.*

This could be a licensing valid finding with no administrative hearing rights. What is happening to due process here? Eliminate this section.

(iii) *The termination, revocation, suspension or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.*

Currently, it is common practice for some DEL licensors to coerce providers into "voluntarily" surrendering their licenses, without telling them the consequences for future work in child care, or other work with children. Voluntary surrender of a license should be eliminated from this section. How far will the look back be on suspensions? What if a provider was told "take the suspension or close down," as many have been told, rather than, "Here are your rights."

This section does not specify the kind of license in question. It should specify the type of license or

not changed, but assured that relation to
child care, adult care necessary

certification in question.

(iv) *The termination or denial of employment or contract.* **changed**

This is a ridiculous requirement for the Background Check Rules. How will it be managed or checked? Is DEL really going to call past employers? Eliminate this section.

(v) *The revocation, suspension, denial or restriction placed on any professional license.* **not changed**

Any professional license, real estate, insurance, business, beautician's, massage therapist? What does this have to do with child care? Eliminate this section as it can be covered in (iii) which should specify child care related licenses.

(vi) *A final decision of a disciplinary board* **not changed**

Again, what does this have to do with child care? Eliminate this section unless it specifically relates to child care.

10 (v) *"Unsupervised Access" means*

(b) *Access that is not within constant visual and auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.*

This means a licensee could not go to the bathroom with the door closed. Change the *and* to *or*, otherwise all licensees will be in violation when taking care of their personal needs.

Once again, DEL is writing WAC guaranteeing family child care providers will fail to comply and resulting in the incorrect judgment of "bad character." Either change the "and" to "or," or keep the same definition as in 388-06-0020. That was:

Unsupervised access means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time. **did not change**

WAC 170-06-0040 Background authorizations.

(2) *Each person identified in this section must complete a DEL Background Authorization form, indicating whether he or she has been convicted of any crime, a complete disclosure of all arrests, the subsequent dispositions of such arrests and disclose negative action, to which he or she has been subject, as defined by WAC 170-06-0020 (8).*

With this new section, a potential licensee would have to address all of the (8) issues, whether they related to child care or not. Arrests will be disclosed on the FBI criminal background check. This is redundant. Only negative actions that specifically relate to work or licensing in child care should be disclosed. **not changed**

(3) *This section specifies timelines for submitting background check forms.* Add a section (b) which specifies a timeline for the state to return the results to the licensee. The state shall return the results of the background check within 10 days (or some "reasonable" timeline, to the licensee, that is.) Ridiculous delays are causing hardships for many child care providers. **not changed**

WAC 170-06-0050 Department action following completion of background inquiry

(2) *Evaluate any negative action information to determine whether the applicant has any negative actions requiring disqualification under WAC 170-06-0070 (3).*

The new draft has eliminated the words, "unless the department determines that the person does not pose a risk to a child's safety and well-being." Add these words back in to WAC 170-06-0070 (3). Otherwise, eliminate this section. **not changed**

(3) *... evaluate any negative action information and other pertinent background information. . . warranted under WAC 170-06-0070 (4) or (6)* **not changed**

Once again, eliminate (4) in this section. It is too vague and subjective. Would this include vehicle

violations or parking fines? By adding this section, DEL is driving even more children to illegal care.

WAC 170-06-0060 (2) (3) Additional information the department may consider

This section is problematic for many reasons. The provider pays for the evaluation, yet DEL picks the evaluator and talks to the evaluator prior to the evaluation. Sounds like the new version of the old "Company Doctor" that would say what the factory owner wanted him or her to say. Add *The department must show "just cause" before requesting this additional information*, otherwise it will be used subjectively. Applicants should be able to use their own medical professionals to have input, as well. *not changed*

WAC 170-06-0070 Disqualification

(3)(a) Add back in the qualifying language in the previous draft, specifying posing a risk to children *not changed*

(3) (c) Add back in the qualifying language in the previous draft, specifying the posing of a risk to children. *?*

(4) This language is too open and allows for personal vendettas by licensing to apply. What are the safeguards against this? Who defines "reasonably"? Eliminate this section. *not changed*

(5) Child care providers should be able to remain open with a safety plan and parent notification policy. *not changed*

WAC 170-06-0080 Notification of disqualification

We need timelines here. In how many days, will the department notify the applicant in writing?

WAC 170-06-0090 Administrative hearing to contest disqualification

(2) An employer or prospective employer should be able to testify or provide evidence which will apply to the applicant's character, suitability and competence to care for or have unsupervised access to children in child care. *? does it exclude possibility*

(3) Timelines? Add timelines for the hearing to take place. *not changed*

WAC 170-06-0110 Limitations on challenges to disqualifications.

(4) Once again the use of the "negative action" section will create situations where a potentially great care-giver will be disqualified, again driving more children into the escalating illegal care market. DEL should not be allowed to take away an applicant's rights to contest a finding or decision. *not changed*